

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* K. L. PFEIFFLE, Minor.

UNPUBLISHED  
July 26, 2016

No. 330729  
Washtenaw Circuit Court  
Family Division  
LC No. 14-000136-NA

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Before: STEPHENS, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Respondent-mother appeals as of right the November 19, 2015 order terminating her parental rights to the minor child after mother pled to statutory grounds under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), (i) (prior termination of parental rights due to serious and chronic neglect; prior attempts at parental rehabilitation unsuccessful), (j) (reasonable likelihood that child will be harmed if returned to the parent), and (l) (parent’s rights to another child were terminated). We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

Mother first argues that the trial court erred in determining that there was sufficient evidence to support terminating her parental rights. Mother’s argument, while couched as one attacking the court’s best interests determination, is an attack on the factual basis of her no contest plea. She argues that the court did not consider accurate information in terminating her parental rights. Because mother did not move to have the plea set aside below, this unpreserved claim is reviewed for plain error. *People v Carines*, 460 Mich 750, 763–764; 597 NW2d 130 (1999). To prevail, mother must show that: 1) an error occurred, 2) the error was clear or obvious; and 3) the error affected her substantial rights. *Id.* at 763.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “A respondent may make a plea of admission or of no contest to the original allegations in the petition.” MCR 3.971(A). Before accepting a plea in a child protective proceeding, the court must ensure that the plea is accurate. MCR 3.971(C). In accord with MCR 3.971(C),

[t]he court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds

alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

Here, mother admitted to two prior terminations and pled no contest to the petition allegations that she was not taking her medication and not attending therapy for her mental health. As a factual basis for the no contest portion of her plea, Department of Health and Human Services (“DHHS”)<sup>1</sup> worker Jasper Rayborn testified that mother’s current diagnoses were post-traumatic stress syndrome, depression, and borderline personality disorder, and that mother was not taking her prescribed medication and was not attending mental health therapy. The court found that mother’s plea and Rayborn’s testimony established both a preponderance of the evidence to accept jurisdiction over KP, and clear and convincing evidence to establish the statutory grounds listed in the petition.

The court clearly erred in finding that mother’s plea established statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), (j), and (l). MCL 712A.19b(3)(c)(i) was inapplicable where 182 or more days had not elapsed between the date of the initial dispositional order and termination when as here, permanent custody was requested at the initial disposition. Mother’s plea also did not establish, in accord with MCL 712A.19b(3)(g), that she failed to provide proper care and custody to KP during that period. Mother had no opportunity to provide proper care and custody when KP was taken from mother in the hospital days after birth. The plea also did not establish, under MCL 712A.19b(3)(j), that there was a reasonable likelihood that KP would be harmed if returned to mother. That finding did not occur until after a subsequent best interest hearing. We also conclude that the trial court erred in finding MCL 712A.19b(3)(l) established termination, based on this Court’s recent decision in *In re D Gach*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016); slip op at 8, that (3)(l) “violates the due process protections of the federal and state constitutions . . . .”

However, the trial court did not err in finding that mother’s plea supported finding statutory grounds for termination under MCL 712A.19b(3)(i). The conditions that led to adjudication in this case were mother’s two prior terminations and failure to seek treatment for her mental health. There was no dispute that mother had prior terminations and that mental health was an outstanding issue from her prior cases in which services were offered. At the plea hearing, Rayborn testified that mother was not on any medication for her mental health nor was she in therapy. Mother did not refute this evidence. Only one ground for termination of parental rights needs to be established, *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000), and the trial court did not err in finding based on mother’s plea and Rayborn’s testimony, that clear and convincing evidence existed to support termination under MCL 712A.19b(3)(i).

## II. BEST INTERESTS

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<sup>1</sup> Formerly, the Department of Human Services and the Department of Community Health were separate. The Department of Human Services initiated this matter.

Next, mother argues that termination of her parental rights was not in the best interests of KP. We disagree.

“[O]nce the trial court finds that there are statutory grounds for termination, the trial court must terminate parental rights unless it finds by clear evidence that termination is not in the child’s best interests.” *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). This Court reviews the trial court’s determination of best interests for clear error. *Id.* at 80. “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *Id.* at 90. When considering best interests, the focus is on the child rather than the parent. *Id.* at 87. “The trial court should weigh all the evidence available to determine the child’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). It may consider such factors as “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home[.]” *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); (citations omitted). Other factors that the trial court can consider include how long the child lived in foster care or with relatives, the likelihood that “the child could be returned to [the] parent’s home within the foreseeable future, if at all[.]” and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court found that termination was in KP’s best interests because there was not a strong bond between mother and KP, mother’s parenting ability was poor, mother failed to benefit from services, KP was doing well in her foster home, and KP’s foster home provided the child an environment that allowed the child to thrive. The court considered mother’s current rehabilitative efforts toward achieving mental health. Indeed the court encouraged mother to continue with medication and therapy. However, when it compared the clinician report prepared in mother’s prior termination cases to mother’s current parenting and decision making ability, it found that mother was still not in a place of stability necessary to raise a child. After a review of the record, we agree.

With regard to mother’s bond with KP, Houle testified that it was not strong. The court recognized that this was partly due to KP being removed from mother’s custody shortly after birth and their only contact being through supervised visits. Houle testified that she offered mother advice to engage and closely bond with KP during visitations, but that mother needed to be prompted to do so. Mother admitted that KP sometimes became upset when she had to go to her and that she had trouble interacting with KP. Mother’s lack of a strong bond supports the trial court’s finding that termination was in KP’s best interests. See *In re Olive/Metts*, 297 Mich App at 41-42.

With regard to mother’s parenting ability, mother admitted at the termination hearing that she needed redirection. She was unable to state her most important strength as a parent and could not discern any difference between her visits with KP in this case and her visits with the minor children to whom her rights were previously terminated. She testified to sharing a one-bedroom apartment with her current husband Michael Pfeiffle, but Michael denied DHHS access to the home and she admitted that the only items in that home for KP were a bathtub and a playpen. The court was concerned that mother was not prepared for KP and that mother was asking for KP’s return to a home where no one was allowed entry.

The court reasoned that while mother may not have had control over the bond she had with KP, parenting ability also involved making choices that would lead to a safe and stable environment within which to raise a child. The court considered the number of men with criminal histories that were in and out of mother's life in a short period as an unstable and uncertain situation for KP. Mother's previous husband was convicted of child abuse and she had dated a convicted sex offender; both men had access to her previously terminated children. Mother admitted that her current husband had an active felony warrant and would not let DHHS enter the home. The trial court did not clearly err in finding that Mother's judgment regarding men with criminal histories posed a risk to KP. See *In re White*, 303 Mich App at 712.

The court also did not err in finding that the foster home in which KP lived was preferable to mother's home environment. The foster home had other children with whom KP got along well. The foster parents took KP to the zoo and on vacations to Texas. Houle testified that KP was "very happy with the foster family" and "all the children that are in the home." KP needed stability and the foster parents were willing and able to provide this. Mother argues that the trial court erred in considering the advantages of the foster home over mother's custody. While we can see how such a comparison may result in an economic bias, this Court has explicitly stated that "the advantages of a foster home over the parent's home" may be considered when determining best interests. See *In re Olive/Metts*, 297 Mich App at 42. Given mother's prior terminations and her failure to improve in the areas that led to those terminations, it was unlikely that KP "could be returned to [mother]'s home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249. For the above reasons, the trial court's finding that termination was in KP's best interests was not clearly erroneous. *In re Moss*, 301 Mich App at 80.

Mother also argues on appeal that the trial court erred in failing to consider all of the best interest factors established under MCL 722.23. We disagree. That statute is part of the Child Custody Act, 722.21 *et seq.*, and is not required to be considered in termination proceedings. See *In re JS and SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Rather, when determining best interests with regard to termination, "[t]he trial court should weigh all the evidence available to determine the child's best interests." *In re White*, 303 Mich App at 713. The court did so in this case and its conclusion was not clearly erroneous.

### III. DUE PROCESS

Mother further argues that termination of her parental rights violated her constitutional right to determine KP's upbringing. The Due Process Clause of the Fourteenth Amendment of the United States Constitution protects "the interest of parents in the care, custody, and control of their children . . . ." *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). However, "[i]n Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, DH[H]S policies and procedures, and various federal laws . . . ." *In re Rood*, 483 Mich 73, 93; 763 NW2d 587 (2009). After statutory grounds for termination are established, however, "the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich at 355. Because the trial court found, based on mother's plea and Rayborn's testimony, that a statutory ground to terminate was established, mother no longer had

a constitutionally protected interest in the custody and control of KP when mother's rights were terminated. *In re Trejo*, 462 Mich at 355. Furthermore, contrary to mother's argument, the record clearly shows that her termination was supported by current evidence, not merely evidence regarding her past behavior.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Deborah A. Servitto

/s/ Elizabeth L. Gleicher